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No. 86-870

In The Supreme Court of the United States

October Term, 1986

PHILLIPS PETROLEUM COMPANY, AND CINQUE BAMBINI PARTNERSHIP

PETITIONERS

VERSUS

STATE OF MISSISSIPPI AND SAGA PETROLEUM U.S., INC.

RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

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QUESTION PRESENTED

Whether at the time of Mississippi's statehood in 1817, the lands under the non-navigable but tidally influenced inland waters were conveyed by the United States to Mississippi as part of the state-owned public trust.

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NO. 86-870

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

PHILLIPS PETROLEUM COMPANY, and
CINQUE BAMBINI PARTNERSHIP,

Petitioners,

vs.

STATE OF MISSISSIPPI and
SAGA PETROLEUM U.S., INC.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF MISSISSIPPI

BRIEF IN OPPOSITION

Respondent, State of Mississippi, respectfully prays that the Petition for Writ of Certiorari to the Supreme Court of the State of Mississippi be denied in this case.

OPINIONS BELOW

The opinion of the Supreme Court of the State of Mississippi, as modified on rehearing, is reported as Cinque Bambini Partnership, et al v. State of Mississippi, et al., 491 So.2d 508 (1986). A copy of the opinion is before the Court in Petitioners' Appendix A to Petition for Writ of Certiorari to the Supreme Court of Mississippi Pet. App. 1a -26a.[1]

On Petition for Rehearing, Pet. App. 28a, the request for rehearing was denied; however, the language in the opinion was changed to include on Pet. App. 24a "(to the extent that each lake was not naturally within the ebb and flow of the tide on the date the dredging commenced)."

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[1] For the convenience of the Court, all references to Petitioners' Appendix will be listed as "Pet. App." and all references to Respondent's Appendix will be listed as "Res. App."

The Findings and Rulings of the Chancery Court of Hancock County, Mississippi, are not officially reported. A copy of this opinion with the Final Judgment and Decree is also before the Court in Petitioners' Appendix B to Petition for Writ of Certiorari to the Supreme Court of Mississippi at Pet. App. 29a-74a.

JURISDICTION

Petitioners seek to invoke the jurisdiction of this Court by way of a Petition for Writ of Certiorari through the authority of 28 U.S.C. §1257 (3). They fail to present sufficient facts and arguments upon which this Court should grant certiorari.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOKED

Petitioners seek to invoke the provisions of the Constitution of the United States, Article IV, Section 3: the Act of March 1, 1817, 3 Stat. 348; and the Resolution of

December 10, 1817, 3 Stat. 472, 473. They also rely on section 49-27-5, Miss. Code Ann. (Supp. 1986).

STATEMENT OF THE CASE

A. Factual Background

In the decision at issue (Pet. App. 1a), the Mississippi Supreme Court held that certain tidelands in dispute located in Hancock County, Mississippi, belonged to the State as part of the state-owned public trust. Petitioners have posed the question to this Court whether the "lands under the non-navigable but tidally influenced inland waters were conveyed by the United States to Mississippi as part of the state-owned public trust."

The lawsuit arose following action by the Mississippi State Mineral Lease Commission in 1977 granting oil and gas leases to Saga Petroleum U.S., Inc. for an estimated 600 acres of tidelands in Hancock County. Such oil and gas leases made it clear that they covered only

lands subject to the ebb and flow of the tide and which were below the water mark of mean high tide. (Pet. App. 54a).

The Petitioner, Cinque Bambini Partnership, and other title holders filed suit in Hancock County Chancery Court claiming these state-owned tidelands to be part of 2400 acres owned by them, for the most part covered by federal patents issued to their predecessors-in-title under Acts of Congress of 1822 and 1830.

The acreage in dispute was approximately 140 acres consisting of 42 plus acres made up of the north branch of Bayou LaCroix and 11 small streams and inlets and 98 acres consisting of Bayou Enciente and Long Gar Bayou and adjacent Bambini uplands which were dredged out at the direction of the Cinque Bambini Partnership to make two deep lakes for their personal use. (Pet. App. 47a, 52a to 57a).

The dredging operation conducted by the Cinque Bambini contractor at their direction altered the original bed of Bayou Enceinte and Long Gar Bayou (Pet. App. 55a); obliterated and destroyed the original mean high water mark on the banks of Bayou Enceinte and Long Gar Bayou (Pet. App. 56a); and filled in the original entrance and channel of Bayou Enceinte, which was below mean high tide, to the exclusion of the ebb and flow of the tide. (Pet. App. 56a).

A new artificial channel was constructed for the mouth of Bayou Enciente which resulted in property originally owned by the Cinque Bambini Partnership being lowered below the level of mean high tide. (Pet. App. 56a).

The beds of the interior bayous, inlets, and steams which were within the property the subject of this lawsuit, "are below mean high tide and are subject to the ebb and flow of the tide." (Pet. App. 57a).

The Chancery Court of Hancock County held (Pet. App. 29a-74a), that all of the tidelands in dispute belonged to the State under the Public Trust Doctrine in accordance with the common law adopted by Mississippi. Included were the two lakes dredged out at the direction of the Cinque Bambini partnership from the state-owned bayous and associated tidelands together with the portion of the lakes dredged from the Bambini uplands.

Despite their stated acceptance of the summary of facts by the Mississippi Supreme Court, Petitioners persist in claiming unfair treatment by the court below of their "Spanish land grants." It therefore becomes necessary to point out the flaw in their argument.

The court below did not find it necessary to examine the authenticity of Petitioners' purported Spanish titles, but disposed of their contention (Pet. App. 18a, 19a) by citing

Pollard's Lessee v. Hagan, 44 U.S. (3 How.) 212, 225 11 L.Ed. 565, 572 (1845) in which this Court described in detail the history of the region formerly known as West Florida (in which the Cinque Bambini lands are located). The Court in Pollard stated unequivocably that the United States never acquired any part of West Florida from Spain and that there was never any treaty between the two countries which would require the United States to protect Spanish titles.

Petitioners cite Acts of Congress which they claim confirmed their titles. They complain that the Mississippi Supreme Court ignored such Acts of Congress and held instead that title to these tidelands was granted to the State of Mississippi at statehood in 1817.

Although there was no treaty between the United States and Spain covering this area and consequently no underlying international duty,

the United States adopted legislation appointing commissioners to investigate land claims of possible settlers in the region.

The claims of the Cinque Bambini predecessors (Pet. App. 39a) were not based on grants at all, but were merely claims based on settlement and occupation of the land prior to 1813. These claims are listed in the American State Papers, Public Lands, (Duff Green edition) Vol. 3 at 392-396, (Res. App. 1a-5a, infra) and Vol. 5 at 320-322 (1834) (Res. App. 6a-8a, infra) The claims of John J. Jourdan, Noel Jourdan and Pierre Carco were presented to the commissioners under an Act of Congress dated March 3, 1819, 3 Stat. 528. The American State Papers show that there were four claims. The John Joseph Jourdan Claim No. 23, the Pierre Carco Claim No. 25, and the Noel Jourdan Claim No. 28 (Res. App. 1a, infra)

appeared in the list of actual settlers in the district east of Pearl River "who have no claims derived from either the French, British, or Spanish Governments." However, since they were able to show settlement prior to April 15, 1813, they were each given as a "donation" under Section 3 of the Act of May 8, 1822, 3 Stat. 707, a tract of land of 640 acres [Noel Jourdan received 535 30/100 acres].

The additional John Joseph Jourdan Claim No. 8 (Res. App. 5a, infra) for 1000 arpents (acres) is the only one that had any connection with the Spanish authorities, and was merely a permit to settle in April, 1798. The claim had no survey of the boundaries, nor was it inhabited or cultivated. The commissioners rejected this claim because such a claim, it was noted, had been forfeited under the Spanish Law, and did not appear to be entitled to confirmation under any law of the United

States. Subsequently, under a supplemental Act of Congress dated May 24, 1828, 4 Stat. 299, this claim was revived as Claim No. 3 and after additional testimony was taken to show inhabitation and cultivation from 1802, the commissioners stated that the additional testimony did not supply full and satisfactory proof of inhabitation and cultivation, "yet as the inhabitation and cultivation were prior to 1803 we are of the opinion that they ought to be confirmed for a reasonable quantity." It was confirmed for 846 76/100 acres under Sec. 1 of the Act of May 28, 1830, 4 Stat. 408, which provided that such a claim may be eligible for a grant not to exceed twelve hundred and eighty acres to any one person.

A comparison of the Acts of Congress with the descriptions of the claims in the American State Papers (Res. App. 1a-8a, infra), shows beyond question that the Cinque Bambini land titles are not based on "pre-statehood Spanish

land grants, dated April 15, 1813," as claimed by Petitioners, but are merely donations of public lands by the United States Government based on actual settlement in the area prior to April 15, 1813. The term "public lands" does not include tidelands, Borax Consolidated, Ltd, v. City of Los Angeles, 296 U.S. 10, 17, 56 S.Ct. 23, 80 L.Ed. 9, 18 (1935).

It should be noted that the quotation on page 4 of Petitioner's brief that "Congress expressly recognized the grants as valid and complete titles, against any claim on the part of the United States, or right derived from the United States," has no application to the subject land claims but is derived from Sec. 1 of the Act of Congress of May 8, 1822, 3 Stat. 707, and refers to valid Spanish titles which Congress agreed were to be confirmed. Such confirmation was subject to the provision, Sec. 2, that it amounted "only to a relinquishment forever, on the part of the United States, of any claim whatever to

the tract of land so confirmed or granted." It did not convey tidelands even in the case of a valid Spanish title and certainly had no reference to the Cinque Bambini Partnership claims.

The evidence shows that the four federal patents (Res. App. 9a-15a, infra) were simply ordinary patents in the nature of quitclaim deeds conveying such interest as the Federal Government had in the lands and did not convey any tidelands.

The statement of Petitioners that the State of Mississippi showed no interest in "privately held wetlands" until 1973 is incorrect. The many cases cited by the Court below (Pet. App. 13a, 14a) evidence the constant interest of the State in defending the rights of the people in these trust lands, from Martin v. O'Brien, 34 Miss. 21 (1857) to the present case. The Court below correctly ruled (Pet. App. 24a, 25a) that the State is not estopped to assert its title

to and dominion over tidelands within the public trust.

B. The Mississippi Supreme Court Ruling

On appeal by the private claimants, the Mississippi Supreme Court affirmed the Chancery Court's ruling in part and reversed in part. Specifically, the Supreme Court held:

(1) "... [e]ffective upon statehood on March 1, 1817, we understand federal law to provide that the United States granted to the State of Mississippi in trust all lands, to which the United States then held title, including their mineral and other subsurface resources, subject to the ebb and flow of the tide below the then mean high water level -- regardless of whether the water courses were commercially navigable at the time of Mississippi's admission into the Union, regardless of how insignificant the tidal influence, or how shallow the water, regardless of how far inland and remote from the sea. Similarly granted were the beds and streams of all non-tidal waters which were navigable in fact in 1817. This act of creation consummated, the federal sovereign rested." (Pet. App. 15a)

(2) Forty-two (42) acres of tidelands covered by the north branch of Bayou LcCroix

and the eleven (11) small drainage streams belong to the State as part of the public trust, being subject to the ebb and flow of the tide in 1817. (Pet. App. 2a, 15a)

(3) The two lakes created by dredging for fill material used in construction of Interstate Highway I-10 belong to the State to the extent that each lake was naturally within the ebb and flow of the tide on the date the dredging commenced. (Pet. App. 2a, 24a). The artificially created tidelands remain in the record title holders, as the court found that the beds beneath these artificially created tidelands were not tidelands in 1817. (App. 2a, 24a).

The case was remanded to the Chancery Court for establishment on the ground and in the land records of the precise boundaries of the public trust properties today. (Pet. App. 26a, 27a)

The question presented by Petitioners uses the phrase "non-navigable" in connection with tidally influenced inland waters, thus showing a definite lack of understanding of colonial history, the English common law, the rights reserved by the thirteen original states at the formation of the Federal Government, the equal footing doctrine, and all the decisions in state and federal courts defining the accepted meaning of "navigable waters" at the time Mississippi entered the Union in 1817.

It is well settled that the definition of "navigable waters" is all waters subject to the ebb and flow of the tide to the mean high water mark, regardless of whether the water courses are commercially navigable, regardless of how insignificant the tidal influence, regardless of how shallow the water, and regardless of how far inland or remote from the sea.

Under this definition waters might be non-navigable in fact but they cannot be non-navigable as far as trust ownership goes.

From the above it is evident that at the time of statehood in 1817 all the lands under the influence of the tide were conveyed by the United States to Mississippi as part of the state-owned public trust whether they were navigable in fact or not.

REASONS FOR DENYING THE WRIT

1. The case below was correctly decided and is consistent with the prior decisions of this Court.

The decision of the Mississippi Supreme Court that the State owns all of its tidelands wherever the tide ebbs and flows to the mean high water mark is correct and is consistent with the prior decisions of this Court regarding ownership of tidelands. It fails to raise an equal footing problem of importance to all the states. The question presented has

also been well settled by the prior decisions of this Court. Respondents therefore respectfully request that this Court deny certiorari in this case.

The suggestion that the Mississippi decision will "create an imbalance in the equal footing doctrine" that favors coastal states over inland states is absurd. This shows a complete lack of understanding of the origin and purpose of the equal footing doctrine.

The equal footing rule was established in the Ordinance of 1787 setting up a procedure for the formation of new states. The Resolution of December 10, 1817, admitting Mississippi into the Union, reads:

> RESOLVED . . . that the state of Mississippi shall be one, and is hereby declared to be one, of the United States of America, and admitted into the union on an equal footing with the original states, in all respects whatever. 3 Stat. 472, 473.

Mississippi adopted the English common law.

The equal footing rule approved by Congress guaranteed that all new states would have the same rights and dominion over their tidelands as the original thirteen states, all of which were coastal. In 1817 when Mississippi received its tidelands, these were the only lands included within the public trust and which passed to the State under the equal footing rule. No suggestion was made at that time that if a new state had no coastline it must be given something to compensate it to meet a "constitutional rule of equality among the states."

That the original states owned all of their tidelands as a sovereign right, without limitation of any kind, and that these rights were not surrendered to the Federal Government under the Constitution have never been questioned. Thus Mississippi at statehood was

entitled to the same rights. Tidelands were considered "navigable waters"[2] under the common law and include all lands subject to the ebb and flow of the tide up to the high water mark.

The implication by Petitioners, that after nearly 200 years the well-settled meaning of "navigable waters" in 1787 should be retroactively changed to exclude non-navigable-in-fact tidelands has no merit in law. This new legal standard would require that all previous decisions of this Court with respect to state ownership of tidelands would have to be overruled, and that all titles in such lands now vested in the State would have to be voided and turned over to the adjacent upland owners in order to ensure that

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[2] Under the strict common law definition of "navigable" all waters subject to the ebb and flow of the tide are considered navigable, so there can be no such thing as "non-navigable" tidewaters.

Mississippi would not have a "more-than-equal" footing over inland states.

The following excerpts from decisions of this Court confirm that the new states received all of their tidelands at statehood:[3]

Martin v. Waddell, 41 U.S. (16 Pet.) 367, 410 (1842),

> "For when the Revolution took place the people of each State became themselves sovereign; and in that character hold the absolute right to all their navigable waters and the soils under them for their own common use, subject only to the rights since surrendered by the Constitution to the general government.

Pollard's Lessee v. Hagan, 44 U.S. (3 How.) 212, 230 (1845):

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[3] This general equal footing rule of ownership of tidelands is qualified by an exception in the case of individual lawful titles to tidelands which are protected by a pre-statehood international treaty, as in the case of California under the 1848 U.S. Treaty with Mexico.

"First. The shores of navigable waters and the soils under them, were not granted by the Constitution to the United States, but were reserved to the States respectively.

Second. The new States have the same rights, sovereignty, and jurisdiction over this subject as the original States.

Third. The right of the United States to the public lands, and the power of Congress to make all needful rules and regulations for the sale and disposition thereof, conferred no power to grant to the plaintiffs the land in controversy in this case."

Shively v. Bowlby, 152 U.S. 1, 57, 58 (1894):

"At common law, the title and the dominion in lands flowed by the tide were in the king for the benefit of the nation. Upon the settlement of the colonies, like rights passed to the grantees in the royal charters, in trust for the communities to be established. Upon the American Revolution, these rights, charged with a like trust, were vested in the original states, within their respective borders, subject to the rights surrendered by the Constitution to the United States.

* * * * *

The new states admitted into the Union since the adoption of the Constitution have the same rights as the original states in the tide waters, and in the lands under them, within their respective jurisdictions.

* * * * *

The donation land claim, bounded by the Columbia river, upon which the plaintiff in error relies, includes no title or right in the land below high water mark;...." (Emphasis supplied)

Borax Consolidated, Ltd. v. City of Los Angeles, 296 U.S. 10, 15, 16 (1935):

"The controversy is limited by settled principles governing the title to tidelands. The soils under tidewaters within the original States were reserved to them respectively, and the States since admitted to the Union have the same sovereignty and jurisdiction in relation to such lands within their borders as the original States possessed. Martin v. Waddell, 16 Pet. 367, 410, 10 L.ed. 565, 573, 574; Goodtitle ex dem. Pollard v. Kibbe, 9 How. 471, 478, 13 L.Ed. 220, 223; Weber v. State Harbor Comrs., 18 Wall. 57, 65, 66, 21 L.ed. 798, 801, 802; Shively v. Bowlby, 152 U.S. 1, 15, 26, 38

L.ed. 331, 337, 341, 14 S.Ct. 548.

This doctrine applies to tidelands in California...

* * * * *

"It follows that if the land in question was tideland, the title passed to California at the time of her admission to the Union in 1850. That the Federal Government had no power to convey tidelands which had thus vested in a State, was early determined. Pollard v. Hagan .... See also Shively v. Bowlby..." (Emphasis supplied)

Oregon ex rel. State Land Board v. Corvallis Sand & Gravel Co., 429 U.S. 363, 374 (1977):

"Thus under Pollard's Lessee the State's title to lands underlying navigable waters within its boundaries is conferred not by Congress but by the Constitution itself. The rule laid down in Pollard's Lessee has been followed in an unbroken line of cases which make it clear that the title thus acquired by the State is absolute so far as any federal principle of land titles is concerned. For example, in Weber v. Harbor Comm'rs, 18 Wall., at 65-66, the Court reaffirmed the doctrine of Pollard's Lessee:

'Upon the admission of California into the Union upon equal footing with the original States, absolute property in, and dominion and sovereignty over, all soils under the tidewaters within her limits passed to the State, with the consequent right to dispose of the title to any part of said soils in such manner as she might deem proper, subject only to the paramount right of navigation over the waters....(Emphasis added)'"

Summa Corp. v. California ex rel. State Lands Commission, 466 U.S. 198, 205 (1984):

"The federal government, of course, cannot dispose of a right possessed by the State under the equal footing doctrine of the United States Constitution. Pollard's Lessee v. Hagan, 3 How. 212 (1845). Thus, an ordinary federal patent purporting to convey tidelands located within a state to a private individual is invalid, since the United States holds such tidelands only in trust for the state. Borax Co. v. Los Angeles, 296 U.S. 10, 15-16 (1935)."

The case of Utah v. United States, No. 85-1772, 55 U.S. Law Week 3257 (Oct. 14, 1986),

in which this Court recently granted certiorari, and mentioned by Petitioners as presenting "another facet of the public trust doctrine," has no bearing on the instant case.

The issue in Utah v. United States, Ibid., is whether the provisions of a pre-statehood federal law, reserving federal title to Utah Lake as a reservoir, can defeat the State's entitlement to the ownership of the lakebed at statehood. The Federal Government claims that it had the right to reserve ownership of Utah Lake for the purposes of irrigation under the "public exigency" exception in the equal footing doctrine. Shively v. Bowlby, 152 U.S. 1, 48-50 (1894); Borax Consolidated, Ltd. v. City of Los Angeles, 296 U.S. 10, 15, 18 (1935).

There is a significant distinction between the Utah and Mississippi cases. In the Mississippi case, while the Federal Government

held the tidelands in trust for the future State, it made no reservations, and indeed could lawfully make none, concerning any of these lands and therefore the State received all of its tidelands upon its admission to the Union in 1817.

If, as suggested by Petitioners, the reason for denial of certiorari by this Court in City of Newark v. Natural Resource Council, 82 N.J. 530, 414 A.2d 1304 (1980), 449 U.S. 983 (1980), was that it involved sovereign ownership of tidelands under the common law by one of the original thirteen states and therefore did not present a federal question, it follows that this Court should deny certiorari in the instant case under the equal footing doctrine.

2. The navigability-in-fact test did not replace the ebb and flow test in tidal waters.

In the Propeller Genesee Chief v. Fitzhugh, 53 U.S (12 How.) 443 (1851), this Court

extended the federal admiralty jurisdiction to commercially navigable waters above the tide. Consistent with these principles, this Court in Barney v. Keokuk, 94 U.S. 324 (1876) extended the doctrine of state ownership of tidewaters to state ownership of waters which were nontidal but navigable in fact, such extension being affirmed by this Court in Oregon ex rel., State Land Board v. Corvallis Sand & Gravel Co., 429 U.S. 363, 374, 375 (1977). The extension of state dominion over navigable-in-fact waters above the tide did not change the ebb and flow test as it applies to ownership of tidelands.

Petitioners assert that the "toothpick navigability" test created by the Court below conflicts with this Court's historic "navigability-in-fact test." This Court has never established a navigability-in-fact test as a requirement for state ownership of

tidelands and Petitioners present no proof of their contention. The "toothpick test" is not in conflict with the navigability-in-fact test of navigability of waters because it is merely a means of measuring the boundaries of the lands within the public trust. It can be used to determine the high water mark in both tidal and nontidal waters. It was never intended to determine the depth of a navigable-in-fact channel. Despite petitioners' belittling comments, the "toothpick test" is a simple, graphic illustration of how the boundaries of lands under the public trust can be determined without the use of any expensive and complicated survey techniques.

In all the decisions of this Court regarding ownership of tidelands, the test of ownership by a state of its tidelands at statehood is whether such lands are subject to

the ebb and flow of the tide. None of these cases has applied a navigability-in-fact test.

The central purpose of the Petitioners' argument becomes clear. It is an attempt to show that the decisions of this Court establish that the ebb and flow test has been discarded and replaced by the navigability-in-fact test with respect to all waters, tidal and nontidal.

First, Petitioners claim that "the repeated decisions of this Court" hold that "the wetlands to which the states acquire public trust dominion are those beneath navigable [meaning navigable in fact] waters, tidal or fresh." (Pet. Brief p. 11) This statement flies in the face of such landmark decisions regarding tidelands as Martin v. Waddell, Pollard's Lessee v. Hagan, Shively v. Bowlby, and Borax Consolidated, Ltd. v. City of Los Angeles, supra.

Next, petitioners cite McGilvra v. Ross, 215 U.S. 70 (1909), and Oklahoma v. Texas, 258 U.S. 574 (1922), as proof that the navigability-in-fact test is the settled rule in this country. It should be noted that those two cases cited do not relate to tidelands but are concerned only with navigable nontidal waters.

Finally, through an erroneous construction of Shively v. Bowlby, supra, and McGilvra v. Ross, supra, Petitioners reach an equally erroneous conclusion that, after Shively and McGilvra, the ebb and flow test has been rendered useless as it applies to tidal waters and has been replaced by the navigable-in-fact test.

Petitioners object to the Mississippi court's assertion of dominion over non-navigable tidelands which, they assert, "appears to be in direct conflict with Shively

v. Bowlby, 152 U.S. 1 (1894), where a similar contention was rejected." Petitioners charge that "the court below refused to apply the Shively 'navigability-in-fact' test," such ruling "lacking any definitive support in this Court's rulings." The statement is also made that the Shively ruling was summarized in McGilvra v. Ross. (Pet. Brief p. 13, 14)

The facts reveal the fallacy in these statements and conclusions.

The ruling of the Mississippi court is obviously not in conflict with this Court's ruling in Shively. Both were tidal cases decided in accordance with the ebb and flow test. In Shively this Court upheld the ruling of the Oregon Supreme court that upon the admission of Oregon into the Union, the tidelands became its property under the common law. Shively v. Bowlby, 152 U.S. 1, 54 (1894).

The Shively ruling was not "summarized" in McGilvra as contended by Petitioners. The McGilvra Court referred to Shively because that Court reviewed all the previous decisions regarding ownership of waters by the States, both above and below the tide. The first nontidal case reviewed was the Genesee Chief, supra, which became the controlling precedent in McGilvra.

It should be noted that the passage quoted from McGilvra, at page 78, has been taken out of context and the facts and arguments of counsel completely ignored, in order to rationalize the desired result. A key line has been omitted immediately before the quoted passage which is crucial to a correct interpretation. It reads at page 78: "We will not review the reasoning by which this contention is attempted to be supported." (Emphasis added)

McGilvra v. Ross, supra, concerned shore lands bordering on two navigable-in-fact freshwater lakes in the State of Washington. McGilvra claimed under a federal patent granted before the state entered the Union. Both parties cited Shively, for different reasons. The State of Washington claimed ownership of these lakes because the State's trust ownership of all its tidelands was extended to include navigable-in-fact waters above the tide due to the ruling in The Genesee Chief, supra. Counsel for McGilvra contended that the freshwater riparian rights of McGilvra should be decided under the common law rule that waters above the ebb and flow of the tide are privately owned, because he acquired such rights before Washington became a state. This is the "contention" rejected by the Court in the line omitted from the quoted passage.

The correct interpretation of the passage is that the Court concluded that, since the Genesee Chief, the common law test of ownership was no longer applicable to navigable-in-fact waters above the tide; that the term "navigable waters," as used in the Genesee Chief, meant "waters which were navigable in fact," and that this "became the test of the dominion of the national and state governments over shore lands and the rights which they had or could convey." The descriptive terms "riparian ownership" and "shore lands," correctly used by the Court, refer to nontidal lakes and rivers. The Petitioners ignored the actual meaning of these words.

The Court did not hold in McGilvra that the ebb and flow test has been replaced with reference to tidelands. The decision merely sustains the ownership by the

states of navigable-in-fact waters above the tide.

This Court's decision in Borax in 1909, and affirmed by Summa in 1984, leaves no doubt that the ebb and flow of the tide is still the test of state ownership of tidelands. Again in Borax this Court's decision was that if the land in question was tideland, it belonged to the State of California at statehood. The importance of Borax is evidently lost on petitioners who limit reference to this decision to a one-line footnote, and Summa is not even mentioned.

It is interesting to note that this petition includes no quotation from any decision of this Court regarding tidelands. Unquestionably, the reason is that every decision on the ownership of tidelands shows that the states received full ownership of their tidelands at statehood.

The later cases cited by petitioners have no bearing on the question presented to this Court. United States v. California, 332 U.S. 19, (1947), concerned ownership of the territorial sea but the United States did acknowledge ownership by the states of their tidelands under the Pollard rule. Bonelli Cattle Co. v. Arizona, 414 U.S. 313 (1973), and Montana v. U.S., 450 U.S. 544 (1981), were both freshwater cases not relevant to the question presented to this Court.

Respondent submits that the failure of Petitioners to sustain their arguments shows that the question presented to this Court is not worthy of a further review.

3. Implementation of the decision below is solely a state question

The Mississippi Supreme Court stated that although public and private interests were in conflict in this case, "this in the end is a title suit." (Pet. App. 1a). Evidence

presented in the Chancery Court of Hancock County proved that the Cinque Bambini Partnership was claiming that its patents included 140 plus acres of tidelands. It is well settled that no federal patent can convey tidelands which have vested in a state. Borax Consolidated, Ltd. v. City of Los Angeles, 296 U.S. 10, 16 (1935). The title to such tidelands is not subject to defeasance. Oregon ex rel. State Land Board v. Corvallis Sand & Gravel Co., 429 U.S. 363, 378 (1977). After tidelands have vested in a state at statehood, state law governs the rights and titles of upland owners in the tidelands. Shively v. Bowlby, supra, at pages 25, 57-58 and Oregon ex rel. State Land Board v. Corvallis Sand & Gravel Co., supra, page 375.

The many decisions cited by the Mississippi Supreme Court (Pet. App. 13a, 14a) have been consistent with the decisions of this

Court. Without exception they have affirmed that the State owns all of its tidelands "wherever the tide ebbs and flows." (Pet. App. 13a) Consequently, the private owners of adjacent uplands should have known that the original patents to the lands in question were ordinary "donation" patents granted by the United States Government for public lands and could not convey title to tidelands.

The charge that Mississippi asserted such title "on a retroactive basis going back more than 150 years, " is untrue. This is not a retroactive proceeding. The State is not asserting a new title to these lands, rather we are simply asserting our sovereign rights by claiming our own property to which we have an indefeasible title going back to 1817. The State's title cannot be lost by adverse possession or laches in asserting dominion over its tidelands. (Pet. App. 25a)

The Cinque Bambini Partnership is not being deprived of its property in this instance because it never received title to the tidelands in question.

It should not go unnoticed that the Cinque Bambini's private contractor at their direction, while constructing their private lakes, completely destroyed valuable state-owned wetlands and bayous, merging them with their artificially created tidelands, and thus drastically changing the ecology of the region.

Claimed impact on private interests by Petitioners because of the decision below is impossible due to the fact that lawfully no private interest exists. Ownership of the tidelands was, and is, vested in all of the citizens of the State and the benefits of such ownership rightfully belong to all the people

in the State and not to the few who have encroached on state owned lands.

The Mississippi court ruled properly in accordance with established law. The implication that the court should have ignored rules of law and the rights of all the people in their trust lands and considered only the possible "devastating impact" on a few private landholders is an insult to the Mississippi Supreme Court.

CONCLUSION

For all the foregoing reasons and there being no question of substantial constitutional merit raised, this petition for writ of certiorari should be denied.

Respectfully submitted,

EDWIN LLOYD PITTMAN
ATTORNEY GENERAL
STATE OF MISSISSIPPI

ROBERT FRANKLIN SPENCER
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Counsel for Respondent
State of Mississippi

January 26, 1987

CERTIFICATE OF SERVICE

I, Robert Franklin Spencer, Assistant Attorney General for the State of Mississippi, do hereby certify that I have this date caused to be mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF IN OPPOSITION** to the following:

Eugene Gressman
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Chapel Hill, N.C. 27514

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Mize, Thompson & Blass
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Boyce Holleman
Boyce Holleman, P.A.
Post Office Drawer 1030
Gulfport, Mississippi 39501

Robert Marsel
2400 Westheimer
Houston, Texas 77098

This the 26th day of January, 1987.

Robert Franklin Spencer
ROBERT FRANKLIN SPENCER

AVAILABLE COPY

16th Congress. No. 322. 2d Session.

LAND CLAIMS EAST OF PEARL RIVER AND IN THE TOWN OF MOBILE.

COMMUNICATED TO THE SENATE NOVEMBER 17, 1820.

GENERAL LAND OFFICE,
16th November, 1820.

SIR: I have the honor to transmit herewith copies of the reports of the Land Commissioners at Jackson court-house, and a copy of a letter, (dated 17th August, 1820,) which accompanied them: the reports are numbered 1 to 9, inclusive.

I have the honor to be, most respectfully, sir, your obedient servant,

JOSIAH MEIGS.

The Hon. the PRESIDENT *of the Senate.*

LAND OFFICE AT JACKSON COURT-HOUSE,
August 17th, 1820.

SIR: In conformity with a requisition of the 9th section of the act of Congress, entitled "An act for adjusting the claims to land and establishing land offices in the districts east of the island of New Orleans," I have the honor to report lists or registers of all the claims to land which have been filed in this office, with the substance of the evidence in support thereof, and such remarks upon the claims as appeared to me to be proper.

In consequence of the suggestion in your letter of the 13th November last, evidence of claims to lots in the town of Mobile has been received, which you will find in register No. 7.

Register No. 9, and the accompanying papers, contain a full report of the evidence and the opinion of the register and receiver in relation to the conflicting claims of Joseph McCandless and Ilcria Bermudy.

I have the honor, &c.

W. BARTON, *Register.*

Hon. J. MEIGS,
Commissioner Gen. Land Office, Washington City.

No. 1.

A list of actual settlers in the district east of Pearl river, in Louisiana, prior to the 3d March, 1813, who have no claims derived from either the French, British, or Spanish Governments.

No.	Present claimants.	Original claimants.	Date of pres't settlement.	Date of original settlement.	Where situated.
1	Valentine Delmas	Valentine Delmas	June, 1813	June, 1813	Pascagoula bay
2	Rene Krebs	Rene Krebs	" 1813	June, 1801	Pascagoula bay
3	Rene Krebs	Pierre Krebs	June, 1813	About 1799	Pascagoula bay
4	Antoine Krebs	Antoine Krebs	" 1813	" 1810	Pascagoula bay
5	Hilaire Krebs	Hilaire Krebs	June, 1813	June, 1794	Pascagoula bay
6	Isabella Ghosin	Isabella Ghosin	June, 1813	June, 1794	Pascagoula bay
7	Helen Moro	Helen Moro	June, 1813	June, 1794	Pascagoula bay
8	Jacob Holland	Jacob Holland	July, 1813	Calm. only, 1812	Pascagoula river
9	Thomas Bilbo	Thomas Bilbo	July, 1813	Calm. only, 1812	East side Pascagoula river
10	John Deane	John Deane	July, 1813	" 1809	West side Pascagoula river
11	Charles Holland, jun.	Charles Holland, jun.	July, 1813	" 1812	West side Pascagoula river
12	Maher Lyle	Maher Lyle	July, 1813	January, 1812	Fork of Chickenaw bay & Leaf riv.
13	Daniel McCaskill	Bryant Ferrell	" "	August, 1812	Skinner's creek
14	George B. Demeree	Mde. Nesst Pacquet	Aug. 1813	" 1779	Above White's point, Pasca. riv.*
15	William Patterson	William Patterson	July, 1813	" 1812	East side of Mobile bay
16	John Brewer, jun.	John Brewer, jun.	July, 1813	March, 1808	Pascagoula river
17	Edmond Smith	Edmond Smith	July, 1813	" 1812	East side of Pascagoula river
18	Moss Strahon	Presley German	Aug. 1813	" 1810	East of Pearl river
19	Repa. Joseph Cooper	Joseph Cooper	Sept. 1813	" 1812	Pearl river
20	John Culpepper, sen.	John Culpepper, jun.	Oct. 1813	Spring, 1812	South side of Taylor's creek
21	Stephen Terrell	Stephen Terrell	Oct. 20 1813	1st June, 1811	Old river, near Pearl
22	S. & J. Ford & W. Hunt	John Culpepper, sen.	Nov. 1813	" 1810	Pearl river
23	John Joseph Jourdan	John Jh. Jourdan	Nov. 1813	" 1807	Catahoula river
24	Eleazar W. Ripley	Pierre Morin	" "	" "	Jourdan river†
25	Pierre Cotta	Pierre Cotta	Nov. 1813	" 1801	Grand Bois fort
26	Elisha Carver	Elisha Carver	Nov. 1813	March, 1813	South side Bay of St. Louis
27	Melite Le Sassier	Melite La Sassier	Nov. 1813	" 1813	Bay of St. Louis
28	Noel Jourdan	Noel Jourdan	Nov. 1813	Prior to Ap. 1814	Jourdan river
29	John Bte. Favre	John Bte. Favre	Nov. 1813	April, 1812	Hickory Camp creek
30	Charles Nicasse	Charles Nicasse	Nov. 1813	Pr to 15 Ap. 1812	South side Bouchee creek
31	Joseph Favre	Joseph Favre	June, 1813	2 yrs. pr Ap. 1812	Catahoula river
32	John Guerre	John Guerre	Nov. 1813	" 1812	Bona Chova creek
33	Antoine Chabert	Antoine Chabert	Nov. 1813	" 1810	West bank Jourdan river

* For about six years.

† Inhabited and cultivated for 12 years prior to the taking possession of the country by the United States, and from 1814 to November, 1819.

BEST AVAI

LIST—Continued.

No.	Present claimant.	Original claimant.	Date of present settlement.	Date of original settlement.	Where situated.
1	James McArthur	James McArthur	Nov. 1819	- 1811	Bohemian creek
2	Admr. of Thomas Drury	Thomas Drury	Mar. 1820	- 1812	South side Mobile bay
3	Augustus La Coste	Elizabeth Harthy	Mar. 1820	- 1812	Bay John
4	Joseph Gerdat	Joseph Gerdat	Jan. 1820	- 1810	Park Bottom
5	Heirs of Henry Fremont	Henry Fremont	for many y'rs	previous to 1808	Isle Aux Loups
6	John Bte. Lamy	John B. Lamy	Feb. 1820	- 1792	West side Dauphin island
7	John Cook	Francis Andrew	Feb. 1820	- 1804 or '5	Grand Bay John
8	Samuel Soares	Samuel Soares	April, 1820	Prior to Ap. 1812	Bay of Perdido
9	William Kee	William Kee	April, 1820	- 1812	South side of "Bay" La Launa
10	Peter Soares	Peter Soares	April, 1820	- 1812	West side of Perdido bay
11	Rep.s of Duret	Louis Duret	April, 1820	March, 1790	Eut below Mobile
12	Louis Alexis	Edwin Lewis	Dec. 1820	- 1811	Pascagoula river
13	Martha F. Dolives	Martha F. Dolives	Mar. 1820	- 1812	Three Mile creek
14	Burwell Rouse	Burwell Rouse	Mar. 1820	- 1809	East side of Pascagoula river
15	John Bte. Ravage	John B. Ravage	- -	- b. 1791	Six miles north of Bayou Bistro*
16	George Davis	George Davis	- 1820	Col. and. June, 1811	Fork of Cedar creek
17	Hilaire Dubreuil	Hilaire Dubreuil	- 1812	- 1811	St. Philip's Head
18	Henry Conway	Henry Conway	Feb. 1820	- 1811	Near Elakelee
19	Maximilian Dubreuil	Maximilian Dubreuil	- 1820	- 1808	Twenty-one miles above Mobile
20	Isaac Graves	Celeste Favre	June, 1820	- 1812	Pearl river
21	Francis Cunningham	Francis Cunningham	Nov. 1819	March, 1813	East side Pascagoula river
22	Elisha Lott	Elisha Lott	- 1820	- 1812	Bainchete creek
23	Joseph Soares	Joseph Soares	April, 1820	- 1812	W. Perdido river
24	Ste. Nicanor, natl. guardian of Joseph's heirs	Joseph Lefont	June, 1820	- 1811	Bay of St. Louis
25	Chevalier Dubreuil	Chevalier Dubreuil	June, 1820	- 1810	South side Wolf river
26	Joachim Pierre Dana	Joachim P. Dana	June, 1820	- 1812	East part Bay of St. Louis
27	John Bte. Nicanor	John Bte. Nicanor	June, 1820	- 1812	Jourdon river
28	Charles Ladner	Charles Ladner	June, 1820	- 1811	East of Wolf river
29	John Ladner	John Ladner	June, 1820	- 1812	Bay of St. Louis
30	John Philip Tessier	John F. Soucier	June, 1820	May, 1812	West side Wolf river
31	Felix Turon	Felix Turon	June, 1820	- 1812	Bay of St. Louis
32	Francis Collet	Thomas Johnson	- 1820	- 1812	East side Iron Jaune river
33	Samuel Ketchen	Samuel Ketchen	June, 1820	- 1811	East of Texas river
34	John B. Vaughan	John B. Vaughan	- 1814	- 1812	Pascagoula river
35	Michael McKinney	Michael McKinney	- -	Early part of 1812	Fish river
36	Reps. of Henry Rankin	Henry Rankin	- 1820	- 1802	Fish river
37	Reps. of James Garnett	James Garnett	June, 1820	June, 1811	Pascagoula river
38	Simeon Dunn	Simeon Dunn	Oct. 1819	March, 1812	Pascagoula river
39	Allen Gordon	Allen Gordon	June, 1820	- 1811	East Pascagoula river
40	Reps. of August's Krebs	Augustus Krebs	June, 1820	- 1811	East side of Pascagoula river
41	Francois Krebs	Joseph Krebs	- -	- 1805	East side of Pascagoula river
42	Reps. of John Graham	John Graham	- 1819	- 1809	East side of Pascagoula river
43	Moses Strahan	Bartlett Brown	Nov. 1819	Autumn, 1812	Buck's branch E. Pearl river
44	William Baxter	William Baxter	Dec. 1819	January, 1813	Juniper branch
45	David Kennedy	David Kennedy	Dec. 2, 1819	October, 1810	West or south side Whiskey cr'k
46	Hiram Smith	Hiram Smith	Oct. 1819	- 1817	East side of Pearl river
47	De Lazzaro	Joseph de Lazzaro	Nov. 22, 1819	August 15, 1817	Bayou La Galliera
48	William J. Stuart	William J. Stuart	Nov. 23, 1819	March, 1815	Bayou Chevreuil
49	Pierre Meria	Pierre Meria	Nov. 22, 1819	Autumn, 1813	Jourdan river
50	William Morrison	William Morrison	Nov. 25, 1819	March, 1817	Bohemian creek
51	John S. Brush	John S. Brush	Nov. 25, 1819	- 1817	W. side up. South Bohemia cr'k
52	Richard Mayo	Richard Mayo	Nov. 1819	January, 1819	East of Pearl river
53	James Tillman	James Tillman	July, 1819	Prior Mar. 3, 1819	Red Creek swamp
54	Mathew Richardson	Mathew Richardson	Aug. 7, 1819	January, 1814	Cedar swamp
55	Charles Lyon	Charles Lyon	Sept. 1819	Autumn, 1818	Head of Cedar creek
56	Noel Turner	Noel Turner	July, 1819	February, 1819	West branch of Cedar creek
57	John Monroe	Charles Hall	July, 1819	April, 1814	Indian creek
58	John Jacob Berg	John Jacob Berg	July, 1819	- 1818	Bayou ———
59	Charles Turner	Charles Turner	Sept. 1819	February, 1819	West prong Cedar creek
60	Joseph H. Gibson	Joseph H. Gibson	Sept. 1819	January, 1819	West pole Escatawpa river
61	Francis Williams	Francis Williams	Sept. 1819	- 1817	West side Big creek
62	David Odom	David Odom	Sept. 1819	February, 1819	West of Bug river
63	Moses Monk	Moses Monk	Mar. 1819	February, 1817	Red Creek island
64	John Farley	John Farley	Oct. 1819	January, 1819	West side Black creek
65	Henry Fletcher	Henry Fletcher	July, 1819	- 1818	Fork of Indian creek
66	Charles Brunet	Charles Brunet	July, 1819	February, 1819	Red creek
67	John Bourre	John Brunet	July, 1819	February, 1819	Fork of Brushy and Red creek
68	Richard Gattens	Richard Gattens	July, 1819	February, 1819	Fork of Brushy and Red creek
69	Grifin Brunet	Grifin Brunet	July, 1819	January, 1812	Black creek
70	Thomas Carter	Thomas Carter	July, 1819	August, 1818	Pascagoula river
71	William Sneider	William Sneider	July, 1819	January, 1814	Black creek
72	Joseph Rodgers, jun.	Joseph Rodgers, jun.	July, 1819	February, 1817	Black Creek to map
73	Prevoir Mathews	Prevoir Mathews	July, 1819	February, 1819	Red creek
74	James Langham	James Langham	Aug. 1819	July, 1817	Cold creek
75	Joseph Burns	Joseph Burns	Sept. 1819	- 1810	West side Pascagoula river
76	Mary Baxter	Mary Baxter	Oct. 1819	January, 1813	Main road fm Mobile to Lee river
77	Benjamin Williams	Benjamin Williams	Oct. 1819	January, 1819	Two miles from Williams' ferry
78	Lewis Williams	Charles Mahony	Oct. 1819	October, 1814	Bug River ferry
79	Enoch Turner	Enoch Turner	July, 1819	February, 1819	Gresham's creek
80	Joshua Murray	Joshua Murray	July, 1819	October, 1817	East branch of Cedar creek
81	Wyche Whatley	Wyche Whatley	Oct. 1819	December, 1813	Bogue Homo

* How long continued is not proven. † Till after the Americans took possession of the country.

‡ To 1814, and subsequently to June, 1820.

ABLE COPY

LIST—Continued.

No.	Present claimant.	Original claimant.	Date of present settlement.	Date of original settlement.	Where situated.
115	James Gold and Henry Patterson	James Gold & H. Patterson	Aug. 1819	August, 1816	East side Mobile bay
116	Smith Johnson	Smith Johnson	July, 1819	January, 1817	Black creek
117	Lewis Goff	Lewis Goff	Sept. 1819	Autumn, 1817	West side of Cedar creek
118	Edmund Goff	Edmund Goff	Sept. 1819	Spring, 1818	Upper fork of Cedar creek
119	Thomas Mellowell	Thomas McDowell	Aug. 1819	" 1816	Pascagoula river
120	Samuel Snell	Aaron Burleson	Jan. 1820	September, 1818	South side of Smith's creek
121	Samuel H. Garrow	Samuel H. Garrow	Jan. 1820	Autumn, 1813	West side of Mobile bay
122	James Goff	James Goff	Dec. 1819	" 1815	Between Cedar and Black creeks
123	Aaron Burleson	Aaron Burleson	Jan. 1820	November, 1818	On the road to Clement's mill
124	Charles Conway	Charles Conway	Jan. 1820	January, 1819	On a creek emptying into Bay Mobile
125	Hezekiah Reuter	Hezekiah Reuter	May, 1820	December, 1816	East side of Red creek
126	James Denmark	James Denmark	May, 1820	January, 1819	East side of Red creek
127	John W. Tanner	John W. Tanner	May, 1820	January, 1814	East side of Pascagoula river
128	Stephen Denmark	Stephen Denmark	May, 1820	January, 1819	East side of Red creek
129	Rodney Cooper	Rodney Cooper	May, 1820	February, 1818	East side of Pascagoula river
130	Regis Bernaiz	Regis Bernaiz	Jan. 1820	Autumn, 1816	Twenty-one miles n. w. of Mobile
131	General Clanel	General Clanel	Jan. 1820	November, 1817	West side Mobile bay
132	William Richardson	Thomas Lanthrop	June, 1820	Autumn, 1814	Five miles from Mobile
133	Jacob Harrell	Jacob Harrell	June, 1820	" 1818	Head of Crooked Billet creek
134	Jacob Page	Jacob Page	June, 1820	Autumn, 1813	Four and a half miles from Mobile
135	John Mason	John Mason	June, 1820	Spring, 1814	Chickasawhay road
136	John Havard	John Harvel	June, 1820	" 1817	South side of Big creek
137	George Fraser	George Fraser	June, 1820	" 1816	Bolachito creek
138	Rasberry Byrd	Rasberry Byrd	June, 1820	October, 1816	Head of Sweet Water creek
139	Donald McCleod	James Worden	June, 1820	February, 1818	Grove pond
140	John Spiers	John Spiers	June, 1820	Spring, 1818	Mill creek
141	Alexander Thiebout	Alexander Thiebout	June, 1820	Latter part 1814	H. Bolachito creek
142	Bartholomew Chisleven	Bartholomew Chisleven	June, 1820	" 1817	East side Pascagoula river
143	Reps. of James White	James White	June, 1820	" 1820	White's point, Pascagoula river
144	Clements & Kellogg	Clements & Kellogg	Feb. 1820	March, 1814	Tiny River mills
145	Dougald McCall	Dougald McCall	Nov. 1819	" 1815	Pearl river
146	Phebe Pollard	Phebe Pollard	Feb. 1820	December, 1817	One mile from Mobile
147	Joseph P. Kennedy	Daniel Hartley	April, 1820	Early part 1815	Bogue Homa
148	Henry V. Chamberlain	Carman Fraser	Feb. 1820	December, 1817	Near Mobile
149	John Jenadreau, Henry Stickney, John W. C. Fleeman	John Jenadreau, Henry Stickney, & J. W. C. Fleeman	April, 1820	February, 1819	West Mobile bay
150	Edwin Lewis	William Murphy	Jan. 1820	November, 1818	Six miles west of Mobile
151	Henry Williams	Henry Williams	Dec. 1819	December, 1815	Red springs
152	Jacob Heng	Jacob Heng	Dec. 1808	" 1804	Graveline, Bayou of
153	Joseph P. Kennedy	Cornelius Ross	Autumn 1819	Autumn, 1814	South side Bogue Homa

Remarks by the Register.—None but persons who have both inhabited and cultivated have been considered by the register and receiver as actual settlers: although many others, who have only either inhabited or cultivated, claimed to be registered as such. It is believed that some of the settlers are upon lands claimed by other persons under written evidence of title, but it is impossible to particularize them, as no new maps or plats accompany the claims.

W. BARTON, *Register.*

JACKSON COURT-HOUSE, *July the 11th*, 1820.

Attest: JNO. ELLIOTT, *Clerk.*

W. BARTON, *Register.*
WM. BARNETT, *Receiver.*

No. 2.

Register of claims to land in the district east of Pearl river, in Louisiana, founded on orders of survey, (requetes,) permissions to settle, or other written evidence of claim derived from either the French, British, or Spanish authorities, which, in the opinion of the undersigned, ought to be confirmed.

Number.	By whom claimed.	Original claimant.	Nature of claim, and from what authority derived.	Date of claim.	Quantity claimed. Front.	Quantity claimed. Deep.	Quantity claimed. Area in arpens.	Where situated.	By whom issued.	When surveyed.	By whom surveyed.	Cultivation and inhabitation. From	Cultivation and inhabitation. To
1	Joshua Kennedy	Francis Fisher	Spa. Governm't	3d July, 1790	20	42	800	East side Texas river	M'l Gayoso de Lemos	No survey	- - -	1793	1814
2	Joshua Kennedy	Chs. Elliot & Leparee	Spa. Governm't	1st April, 1790	21	40	840	Bayou Pupuhee	Lanaux - During	French & British	Governments, and f	rom 1809	1820
3	Thomas Byrne	Cornelius Dunn	Spa. Governm't	17th Sept., 1796	Unknown		-	Patasau bayou	Peter Oliver	No survey	- - -	1795	1804
4	Eam'l Acre, for self and heirs of Narcissus Brenton	Narcissus Brenton	Spa. Governm't	18th June, 1793	20	40	800	Bayou Facoucha	M. Gayoso de Lemos	No survey	- - -	1797	1801
5	John Johnston, sr.	John Johnston, sr.	Spa. Governm't	10th June, 1795	20	40	800	East Tombechee riv.	Baron de Carondelet	No survey	- - -	1793	Jan. 1820
6	Augustin Lacoste	Joseph Mure	Spa. Governm't	21st Sept., 1791	Unknown		-	Dauphin island	Grabot - -	No survey	- - -	1761	for 20 years.
7	Joshua Kennedy	Empresa Bunage, as heirs of L. McCurtin - - -	Spa. Governm't Confirmed	16th Aug., 1787 21st Aug., 1810	-	-	3,200	Texas river -	Stephen Mire	3d August, 1810	V. S. Pintado	1810	1820 by present claim't.

Jackson Court-house, *July* 11, 1820. Attest: Jno. Elliott, *Clerk*.

W. BARTON, *Register*.
WM. BARNETT, *Receiver*.

Remarks by the Register.—Some of the preceding claims have emanated from commandants whose authority to grant permission to settle did not extend beyond eight hundred arpens, to which quantity it is conceived such should be limited. The instructions of Gayoso and Morales seem to recognize a right in the settler after three years inhabitation and cultivation, commenced within one year from the date of the permission or order of settlement, and continued for three consecutive years. In all such cases it is supposed the claim ought to be confirmed, although the land has not been regularly inhabited and cultivated afterwards, if it has not been subsequently granted by the Spanish Government.

W. BARTON, *Register*.

No. 3.

Register of claims to land in the district east of Pearl river, in Louisiana, founded on orders of survey, (requetes,) permissions to settle, or other written evidence of claim, derived from either the French, British, or Spanish authorities, which, in the opinion of the undersigned, ought not to be confirmed.

Number.	By whom claimed.	Original claimant.	Nature of claim, and from what authority derived.	Date of claim.	Quantity claimed. Front	Quantity claimed. Deep.	Quantity claimed. Area in arpens.	Where situated.	By whom issued	Surveyed.	Inhabitation and cultivation.
1	Charles Lelonde	Charles Lelonde	Spa. ord. survey	29 May, 1800	4	40	160	Near Mobile	Cayetano Perez	No survey	Not inhabited nor cultivated.
2	Ebenezer Ross	Ebenezer Ross	Spa. concession	24 January, 1793	-	-	1,000	Bayou Sarah	Gayoso	No survey	Not inhabited nor cultivated.
3	Bepres. F. Fontanillas	F. Fontanillas	Spa. ord. survey	10 June, 1793	20	40	800	Tombechee river	Baron Carondelet	No survey	Not inhabited nor cultivated.
4	Nicholas Wacho	N. Wacho	Spa. permit	29 May, 1811	3	40	260	River "du Bar"	Morales	No survey	No evidence of inhabitation or cultivation, nor that the conditions of the grant were complied with.
5	John Eubanks, sen.	John Eubanks, sen.	Spa. permit	4 February, 1802	-	-	800	River Estaspuché	J. de Gourue	No survey	Cultivation in 1806, by original claimant.

No. 3—Continued.

Number.	By whom claimed.	Original claimant.	Nature of claim, and from what authority derived.	Date of claim.	Quantity claimed. Front.	Depth.	Area in arpents	Where situated.	By whom issued.	When surveyed	Inhabitation and cultivation.
6	Thomas Shields	Constancio Tardiff	Spa. ord. survey	24 April, 1790	20	40	800	Bay of St. Louis	Stephen Miro	No survey	From 1789 to 1815.
7	Anna Burnett	John Bap. Marin	Spa. permit	18 October, 1797	12	60	480	Chatcumpomhon	Philip Zaucier	No survey	Granted by Philip Zaucier, syndic, who had no authority to grant lands.
8	John Jos. Jourdan	John J. Jourdan	Spa. permit	24 April, 1798	25	40	1,000	Bay of St. Louis	Gayoso de Lemos	No survey	Not inhabited nor cultivated.
9	Anthony L. Carroll	Anthony L. Carroll	Spa. permit	24 July, 1802	-	-	2,000	Pearl river	Grandpré	No survey	Not inhabited nor cultivated.
10	Samuel A. Tanner	Samuel A. Tanner	Spa. permit	21 March, 1799	-	-	1,600	Pearl river	Gayoso	No survey	Inhabitation and cultivation in 1802.
11	Francisco Bustea	Francisco Bustea	Spa. ord. survey	22 Sept. 1799	40	40	1,600	W. Pardido river	B. Garcia Cableron	No survey	Inhabitation and cultivation from Jan'y 1811, to January 1820.
12	Lewis Judson and Peter H. Hobart	John McDonald	Spa. ord. settlement	10 July, 1798	-	-	1,600	Baton Sarah	Mr. Gayoso	No survey	Not inhabited nor cultivated.
13	Washington Wilkins	Wash. Wilkins	Spa. permit	31 January, 1809	-	-	800	E. Tensa river	Salazar	No survey	Not inhabited nor cultivated.
14	Wyndham Wren	Lutheyage Robertson	Spa. permit	9 June, 1792	Unknown.		-	Bay of Belazy	Grimarest	No survey	No evidence.
15	Heirs of G. Byrne	Gerald Byrne	Spa. permit	13 January, 1801	21 front, 3 in depth.			River Vashlach	J. de Gorne	No survey	Cultivated, but not inhabited.
16	John Densmore	Francis Krebs	Spa. permit	13 December, 1783	Unknown.		-	Round Island	Grimarest	No survey	Not inhabited nor cultivated.

Jackson Court-house, *July* 11, 1820. Attest, Jno. Ellicott, *Clerk.*

WM. BARTON, *Register.*
WM. BARNETT, *Receiver.*

Remarks by the Register.—Most of the preceding claims have been forfeited under the Spanish law, for want of inhabitation and cultivation; nor do they appear to be entitled to confirmation under any law of the United States. A few are granted by persons whose authority to grant is doubted, or at most upon so extensive a scale. In some cases the inhabitation and cultivation have not been commenced within the time required by the Spanish regulations; and, in others, have not been continued the requisite period by the original claimant or grantee, who had no power to alienate before he had complied with the conditions specified in the grant.

WM. BARTON, *Register.*

No. 4.

Register of claims to land in the district east of Pearl river, in Louisiana, founded on private conveyances, (which have passed through the office of the commandant,) or other evidence, and founded, as the claimant supposes, on grants lost by time or accident.

No.	By whom claimed.	Original claimant.	Quantity claimed.	Where situated.	Inhabitation and cultivation.	Remarks by the register.
1	Rep'n of Chev. and Louis de Lusser	Chev. & Louis de Lusser	Unknown - -	Junction of Mobile and Tensa rivers	From 1781 to 1789.	Though the original grants upon which the preceding claimants founded have been lost, yet it is conceived that the claims to such lands as have been inhabited and cultivated under the Spanish Government, or which were inhabited and cultivated under the British Government, by the person having the legal title therein at the date of the treaty of 3d September, 1783, between Great Britain and Spain, or which were sold and conveyed according to the provisions of the treaty, should be confirmed for a quantity equal to that allowed to actual settlers. W. BARTON, *Regr.*
2	Rep'n of Louis Durat	John Bte. de Lusser	Unknown - -	Opposite Tensa and Mobile rivers	From 1791, how long continued unknown.	
3	Rep'n of Louis Durat	Louis Durat	Unknown - -	Junction of Mobile and Tensa rivers	Under the British and Spanish Governments, and until the year 1791.	
4	Rep'n of John Bohom	John Bohom	Unknown - -	East side of Tensa river - -	Cultivated whilst the British had possession of the country.	
5	Charles Lelonde	Charles Gum	Unknown - -	Junction Deer river with Mobile bay	Under the British and Spanish Governments.	
6	Cthalus Pleck	Andre Pleck	Unknown - -	South side Fish river - -	During the British Government.	
7	Mary Stewart	Charles Stewart	2 arps. front 40 dp. area 80	East side Mobile bay - -	Under the British Government, until 1781.	
8	Mary Anne Dupont	Claude Dupont	Unknown - -	East side Tensa river - -	Under the British Government, and for two years afterwards.	
9	Michael Le Fleur	Dr. Grant	Unknown - -	East side Mobile bay - -	No evidence of inhabitation or cultivation.	

Jackson Court-house, *July the 11th*, 1820. Attest: Jno. Ellicott, *Clerk.*

W. BARTON, *Register.*
WM. BARNETT, *Receiver.*

AVAILABLE COPY

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

source of the main stream. Every objection to granting the seventh prayer applies with equal force to this. They need not be repeated. The court did not err in rejecting it. The instructions to the jury, for which the plaintiff applied to the State court, are, some of them, mixed questions, involving fact with law, and requiring the court to decide the fact, and then to declare the law upon that fact. Others propose a rule, as of universal application, to ascertain the main branch of a river, and the source of that main branch, which would unquestionably, in many cases, mislead us. They propose one single circumstance, in exclusion of all others, as being the infallible evidence of a complex fact, depending on a number of varying circumstances.

The court very properly refused to give any of these instructions.

This court is of opinion that there is no error in the judgment of the State court, and that it ought to be affirmed, with costs.

29th Congress. No. 683. 2d Session.

LAND CLAIMS IN MISSISSIPPI.

COMMUNICATED TO THE SENATE FEBRUARY 18, 1839.

General Land Office,
17th February, 1839.

Sir: I have the honor to enclose, herewith, copies of reports of the register and receiver of the land office for the district of Jackson court-house, Mississippi, under the provisions of the act of Congress approved on the 26th of May, 1838, entitled "An act supplementary to the several acts providing for the adjustment of land claims in the State of Mississippi."

With great respect,
Your obedient servant,
GEO. GRAHAM.

The Hon. John C. Calhoun,
Vice President of the United States and President of the Senate.

Land Office at Augusta,
District of Jackson county, Miss., 15th Jan., 1839.

Sir: In obedience to the act entitled "An act supplementary to the several acts providing for the adjustment of land claims in the State of Mississippi," approved the 26th May, 1838:

In pursuance of the provisions of the above recited act, and for the purpose of carrying the same into effect, we did attend, after having given suitable notice to the claimants of the time and place of our meeting, and the object thereof; and, after having appointed Valentine Delmas, esq., clerk at Jackson court-house and the town of Shieldsborough, and held our respective sessions thereat so long as was thought necessary for carrying into effect the provisions of the aforesaid recited acts:

We have the honor, herewith, to report on the several claims received by us in the performance of the aforesaid duties. Reports numbers 1, 2, 3, and 4, contain the claims founded on written evidence: numbers 5 and 6, those founded on actual settlement. All of which are respectfully submitted.

With great respect,
Sir, your most obedient servants,
WM. HOWZE,
G. B. DAMERON.

George Graham, Esq.,
Commissioner General Land Office, Washington city.

REPORT No. 1.

Register of claims to lands within that part of the limits of the land district of Jackson court-house, in the State of Mississippi, lying below the 31st degree north latitude, (formerly Louisiana,) founded on complete grants derived from either the French, British, or Spanish Government, which, in the opinion of the undersigned, are not valid agreeably to the laws, usages, or customs, of such Government.

Number.	By whom claimed.	Original claimant.	Nature of claim, and from what authority derived.	Date of claim. Day.	Month.	Year.	Quantity claimed. Front.	Depth.	Area in arpens.	Area in acres.	Where situated.	By whom issued.	Surveyed. When.	Surveyed. By whom.	Inhabitation and cultivation. From	To
1	Daniel Boardman	John Marr	British Gov't	23	September	1778	"	"	"	300	Pascagoula	Peter Chester	18 Sept. 1778	Elias Durnford	Not inhabited or cultivation.	
2	Same	Same	Same	"	"	"	"	"	"	300	"	"	"	"	Do	do.

WILLIAM HOWZE, *Register.*
G. B. DAMERON, *Receiver.*

Remarks.—The above grants are void, because it does not appear that they were recognized by the Spanish Government, or that the land was ever inhabited or cultivated. It is believed that the same lands have been donated by our Government.

WM. HOWZE, *Register.*
G. B. DAMERON, *Receiver.*

ATTEST: VALENTINE DELMAS, *Clerk.*

REPORT No. 2.

Register of claims to lands within that part of the limits of the land district of Jackson court-house, in the State of Mississippi, lying below the 31st degree north latitude, (formerly Louisiana,) founded on orders of survey, requetes, permission to settle, or other written evidence of claim derived either from the French, British, or Spanish, authorities, which, in the opinion of the undersigned, ought to be confirmed.

Number.	By whom claimed.	Original claimant.	Nature of claim, and from what authority derived.	Date of claim. Day.	Month.	Year.	Quantity claimed. Front.	Depth.	Area in arpens.	Area in acres.	Where situated.	By whom issued.	When, and by whom surveyed	Inhabitation and cultivation. From	To
1	Juan de Cuevas	Nicholas Christian	Spanish permit	1	August	1781	Un	kno	wn	2661	Cat island	Manuel de Lonzas	No survey	1768	1828
2	Valentine Delmas	Anthony Blanc	Spanish permit	10	September	1793	6	40	240		Pascagoula bay	Bar. de Carondelet	No survey	1802	1828

WILLIAM HOWZE, *Register.*
G. B. DAMERON, *Receiver.*

Remarks.—Claim numbered one, designated as Cat island, contain 2,078 1-100ths acres, most of which are unfit for cultivation. The permit, on which this claim is founded, calls for the whole island. From the long and continued inhabitation and cultivation, it would seem that the claimant ought to be entitled to the whole island, if the laws, usages, and customs of the Spanish Government would warrant such an opinion.

WM. HOWZE, *Register.*
G. B. DAMERON, *Receiver.*

ATTEST: VALENTINE DELMAS, *Clerk.*

REPORT No. 3,

Register of claims to lands within that part of the limits of the land district of Jackson court-house, in the State of Mississippi, lying below the 31° of north latitude, (formerly Louisiana,) founded on orders of survey, requetes, permission to settle, or other written evidence of claim derived either from the French, British, or Spanish authorities, which, in the opinion of the former commissioners, ought not to be confirmed, but which have been revived, and additional testimony adduced in their support, and which, in the opinion of the undersigned, ought to be confirmed for a reasonable quantity.

Claim's Number.	Former Commissioners' report.				By whom claimed.	Original claimant.	Nature of claim, and from what authority derived.	Date of claim.	Quantity claimed.				By whom issued.	When, and by whom surveyed.	Additional testimony.
	Wm. Crawford.		Reg. & Receiver						Front.	Depth.	Arpents.	Acres.			
	No. report.	No. claim.	No. report.	No. claim.											
1	-	-	3	3	Eben. Reese -	Eben. Reese -	Span. concession	January 26, 1795	-	-	1,000	-	Gayoso -	No survey -	Inh., and cult. ever since 1802.
2	-	-	3	9	Anth'y L. Carrell -	Anth'y L. Carrell	Spanish permit	July 24, 1802	-	-	3,000	-	Grandpre -	No survey -	Inh. and cul. 1798, 1812, & 1813.
3	-	-	3	4	John J. Jourdan -	John J. Jourdan -	Spanish permit.	April 24, 1798	23	40	1,000	-	Gayoso de Lemos	No survey -	Inh. and cult. since 1802.
4	-	-	Special 4	2	Rep. of Louis Boisdoré	Louis Boisdoré -	Span. ord. survey	April 26, 1785	-	Unknown		-	Stephen Hore -	No survey -	Inh. and cult. from 1788 to 1828.

WM. HOWZE, *Register.*
G. B DAMERON, *Receiver.*

REMARKS.

Claims numbers 1, 2 and 3 were reported unfavorably of by the former commissioners for want of inhabitation and cultivation, and although the additional testimony which has been adduced in their support does not amount to full and satisfactory proof of inhabitation and cultivation, according to the laws, usages, and customs of the Spanish Government, they are, therefore, forfeited; yet, as the inhabitation and cultivation were prior to 1803, we are of opin on they ought to be confirmed for a reasonable quantity.

Claim number 4—This claim is founded on an order of survey issued by Governor Hore in favor of Louis Boisdoré, and confirmed to his widow Marguerette Bouisson by the Intendant Morales, 4th April, 1808. It does not appear by the title papers that an actual survey was made with geometrical precision, yet a map or conjectural plan, definetly fixing the limits of the claim, was made by the Surveyor-general Pintado, 30th May, 1810. The claim extends from Pearl river to the Bay of St. Louis, and is supposed to contain about *one hundred thousand* acres. The additional testimony adduced to us proves incontestibly that this claim has been inhabited, and a part of the land kept under cultivation upwards of forty years: it is also in testimony before us, that the extent of the claim was distinctly known to the neighbors, and that the claimant set up his claim to the whole limits contained within the before mentioned figurative plan. The above claim is forfeited under the Spanish laws, usages, and customs, for want of inhabitation and cultivation within the time prescribed by those laws and regulations; yet, as the inhabitation and cultivation appears to be very ancient, it is conceived that this claim ought to be confirmed for a reasonable quantity.

WM. HOWZE, *Register.*
G. B. DAMERON, *Receiver.*

Attest: VALENTINE DELMAS, *Clerk.*

Pat 61-78-6021 Vol _____ Page _____ C-6a Order 14553

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Form 1388-8
June 1979

Eastern States 17945

The United States of America,

To all to whom these presents shall come, Greeting:

WHEREAS, There is now deposited in the Bureau of Land Management, evidence whereby it appears that the Private Land Claim of John Joseph Jourdan, being Claim No. 23 in the report of the Land Commissioners at the Jackson Court House (American State Papers, Gales & Seaton Edition, Volume 3, page 444), was confirmed by the Act of May 8, 1822 (3 Stat. 707), and that the said claim has been regularly surveyed and described as follows:

St. Stephens Meridian, Mississippi.

T. 8 S., R. 14 W.,

Sec. 23, All.

The area described contains 640.00 acres, according to the Official Plat of the Survey of the said Land, approved December 9, 1929, on file in the Bureau of Land Management:

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, HAS GIVEN AND GRANTED, and by these presents DOES GIVE AND GRANT unto the said John Joseph Jourdan and to his heirs, the Land above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said John Joseph Jourdan and to his heirs and assigns forever, in accordance with the provisions of the said Act of May 8, 1822.

IN TESTIMONY WHEREOF, the undersigned authorized officer of the Bureau of Land Management, in accordance with the provisions of the Act of June 17, 1948 (62 Stat. 476), has, in the name of the United States, caused these letters to be made Patent, and the Seal of the Bureau to be hereunto affixed.

[SEAL]

GIVEN under my hand, in Silver Spring, Maryland the [illegible] day of JANUARY in the year of our Lord one thousand nine hundred and SEVENTY-EIGHT and of the Independence of the United States the two hundred and second.

By _____

Acting Director, Eastern States

Patent Number 61-78-6021

EXHIBIT # C-6-A
IN EVIDENCE

Eastern States Office
350 South Pickett
Alexandria, VA 22304

MAY 4 1981

Date

I hereby certify that this reproduction is a true copy of the official record on file in this office.

Authorized Signature

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Pat 1109713 V.:__ Page__ Order#_24553-C

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General Land Office C5547 4—1940-R

The United States of America,

To all to whom these presents shall come, Greeting:

WHEREAS, there has been deposited in the General Land Office of the United States, evidence, whereby it appears that the Private Land Claim of Pierre Carco, being Claim No. 25 in the Report of the Register and Receiver at Jackson Court House, communicated to Congress November 17, 1820, (American State Papers, Duff Green edition, volume 3, page 392), was confirmed by the third section of the Act of May 8, 1822, (3 Stat. 707), and that the said claim has been regularly surveyed and designated as Section nineteen in Township eight south of Range fourteen east of the St. Stephens Meridian, Mississippi, containing six hundred forty acres, as shown by the township plat approved December 9, 1829:

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, HAS GIVEN AND GRANTED, and by these presents DOES GIVE AND GRANT, unto the said Pierre Carco, and to his heirs, the land above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities and appurtenances, of whatsoever nature thereunto belonging, unto the said Pierre Carco and to his heirs and assigns forever.

This patent shall operate only as a relinquishment of title on the part of the United States and shall in no manner interfere with any valid adverse right to the same land, nor be construed to preclude a legal investigation and decision by the proper judicial tribunal between adverse claimants to the land.

IN TESTIMONY WHEREOF, I, Franklin D. Roosevelt, President of the United States of America, have caused these letters to be made Patent, and the Seal of the General Land Office to be hereunto affixed.

GIVEN under my hand, at the City of Washington, the TWENTY-SIXTH day of JUNE in the year of our Lord one thousand nine hundred and FORTY and of the Independence of the United States the one hundred and SIXTY-FOURTH

[SEAL]

EXHIBIT # C-19 By the President: Franklin D. Roosevelt

By Jeanne M. [illegible], Secretary.

E. Adams White, Recorder of the General Land Office.

RECORD OF PATENTS: Patent Number 1108713

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A TRUE COPY
E. MICHAEL NECAISE
CHANCERY CLERK
BY [illegible] D.C.
HANCOCK COUNTY, MS

UNITED STATES
TO
JOEL JOURDAN, (4-208)

STATE OF MISSISSIPPI,
COUNTY OF HANCOCK,

DEPARTMENT OF THE INTERIOR,
General Land Office
Washington, D.C. Jan. 23,1902,

JTA.

I Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of Patent issued August 29,1896, to Hoel Jourdan, on his private land claim No.28,Report No.1, of the Register & Receiver at Jackson,Miss, for Section 24, T. 8 S.R. 14 W. St. S. Mer. Mississippi, is a true and literal exemplification from the record in this office.

In Testimony Whereof, I hereunto subscribed my name, and caused the Seal of this Office to be affixed, at the City of Washington, on the day and year above written.

BINGER HERMANN
Commissioner of General Land Office.

THE UNITED STATES OF AMERICA:

To All-to-whom these presents shall come, Greeting:

WHEREAS there has been deposited in the General Land Office of the United States a certificate numbered one hundred and thirty-five ,of the Register of the land office at Jackson, Mississippi, whereby it appears that the provision of the act of Congress, approved on the eighth day of May, one thousand eight hundred and twenty-two entitled "an Act supplementary to the several acts for adjusting the claims to land and establishing land offices in the districts East of the Island of New Orleans " the claim of Hoel Jourdan,entered at number twenty-eight in report number one of the Register and Receiver, at Jackson, Court House, has been confirmed, and that the same has been surveyed and designated as section number twenty-four, in township number eight South of Range Number fourteen, West of St. Stephens Meridian in the State of Mississippi containing an area of five hundred and thirty five acres and thirty hundredths of an acre.

NOW KNOW YE, That in consideration of the premises and in conformity with said Act of Congress, the United States of America has remised, released and quit-claimed, and by these presents does remise, release and forever, quit-claim unto the said Hoel Jourdan, his heirs, assigns, or legal representatives the said land above described.

TO HAVE AND TO HOLD the same together with all the rights,privileges, immunities and appurtenances of whatsoever nature thereunto belonging, unto the the said Hoel Jourdan, his heirs, assigns, or legal representatives forever.

IN TESTIMONY WHEREOF, I, Grover Cleveland, President of the United States of America, have caused these letters to be made Patent and the Seal of the General Land Office to be hereunto affixed.

GIVEN under my hand at the City of Washington this twenty-ninth day of August in the year of our Lord Thousand eight hundred and ninety-six, and of the Independence of the United States the one hundred and twenty-first.

L.S.

(SEAL)

BY the President Grover Cleveland,
[illegible]
[illegible]
Secretary of the General Land Office

EXHIBIT # C-16
IN EVIDENCE

U

D-8.

The instrument of which the foregoing is a record was delivered to me to be recorded on the 18th day of December A.D. 1925 6: P.M. and recorded on the 6th day of January 1926.

A.A. KENDRICK Clerk

EMILIO CUE
TO
CARROLL W. ALLEN,

STATE OF MISSISSIPPI
COUNTY OF HANCOCK

In consideration of the sum of Eighteen Hundred and Eighty & No/100 Dollars ($1880.00) cash in hand, paid, receipt of which is hereby acknowledged, said consideration being based on a basis of $40.00 per acre, for the rights hereinafter described, and conveyed, I, Emilio Cue do hereby bargain, sell and Convey unto CARROLL W. ALLEN- - - - - - - - - - - - - - - - all and every right, title and interest, which I have in and to the unexpired ninety-nine year lease on the following described lands, to-wit:

That piece of parcel of land in Hancock County, Mississippi, described as follows:

Beginning at a point on the North Bank of Bayou Lacroix where the East Boundry line of the Noel Jourdan Claim comes to said Bayou, thence North on said line to the North Line of the Sixteenth Section; thence east on said Section line to Jourdan River; thence the windings of said river, southerly to the mouth of Bayou La Croix, thence up the North Bank of said Bayou, to the place of beginning, containing 47 Acres, more or less, and being all that portion of fractional Section Sixteen, T. 8 S.R. 14 West, which lies West of Jourdan River, between said River and the Noel Jourdan Claim.

WITNESS: my signature this the 15th. day of December, 1925.

EMILIO CUE

STATE OF MISSISSIPPI,
COUNTY OF HANCOCK,

Personally appeared before me the undersigned authority in and for the aforesaid County and State, Emilio Cue who acknowledged that he signed and delivered the foregoing instrument on the day and yeartherein mentioned.

GIVEN under my hand and seal of office this the 15th day of December 1925.

(SEAL)

EVELYN HUNT
Notary Public.

The Instrument of which the foregoing is a record was delivered to me to be recorded on the 18th day of December 1925 A.D. at 6:P.M. and recorded on the 6th day of January 1926.

A.A. KENDRICK, Clerk,

W.J. CUE,
TO
CARROLL W. ALLEN,

STATE OF MISSISSIPPI,
COUNTY OF HANCOCK,

In consideration of the sum of Twenty Thousand and Four hundred fifty nine & 20/100 Dollars, ($20,459.20) cash in hand, paid, receipt of which is hereby acknowledged, I.W.J.Cue, do hereby convey andwarrant unto Carrol W. Allen, the following described land, situated in the County of Hancock, State of Mississippi, to-wit:

Pat 1028144 Vol _____ Page _____ Order# 17 C 4553-CA

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General Land Office 01967.

4—1010-R

The United States of America.

To all to whom these presents shall come, Greeting:

WHEREAS, there has been deposited in the General Land Office of the United States, evidence whereby it appears that pursuant to the Act of May 24, 1828 (4 Stat. 299), the private land claim of John Joseph Jourdan, being claim No.8 in Report No.3, dated July 15, 1829 by the Register and Receiver at Jackson Court House, Mississippi, was confirmed by the first Section of the Act of May 28, 1830 (4 Stat. 408), and that the said claim has been regularly surveyed and designated as Lot five of Section eight, the fractional Sections seventeen and twenty, and the Lot two of Section twenty-one in Township eight south of Range fourteen west of the St. Stephens Meridian, Mississippi, containing eight hundred forty-six acres and seventy-six hundredths of an acre, as shown by the supplemental plats approved August 11, 1832:

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, HAS GIVEN AND GRANTED, and by these presents DOES GIVE AND GRANT, unto the said John Joseph Jourdan, and to his heirs, the Lands above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said John Joseph Jourdan, and to his heirs and assigns forever.

IN TESTIMONY WHEREOF, I, Herbert Hoover, President of the United States of America, have caused these letters to be made Patent, and the Seal of the General Land Office to be hereunto affixed.

GIVEN under my hand, at the City of Washington, the FOURTH day of JUNE in the year of our Lord one thousand nine hundred and TWENTY-NINE and of the Independence of the United States the one hundred and FIFTY-THIRD

(SEAL)

By the President: Herbert Hoover

By Viola C. Pugh, Secretary.

M. P. LeRoy

Recorder of the General Land Office

RECORD OF PATENTS: Patent Number 1028144

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Eastern States Office
350 South Pickett
Alexandria, VA 22304

MAY 4 1981
Date

I hereby certify that this reproduction is a true copy of the official record on file in this office.

Authorized Signature

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